

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOAN PEREZ, :
Plaintiff : **CIVIL ACTION NO. 3:21-170**
v. : **(JUDGE MANNION)**
JUDGE FARRELL, et al., :
Defendants :

ORDER

Pending before the court is the report of Magistrate Judge William I. Arbuckle, which recommends that the plaintiff's complaint (Doc. 1) be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted, but without prejudice to filing a new civil action if the plaintiff's pending criminal proceedings terminate in his favor. (Doc. 10). The plaintiff has failed to file objections to the report and recommendation of Judge Arbuckle.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing

Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

By way of relevant background, the plaintiff brought the instant action naming Judge Farrell, Commonwealth of PA, A. Rivera, Michael Esposito, William Shanley, Sergeants Aloe and Mills, Corrections Officers Jack Gilroy, Denise Slemmer, Pete Zelensky, Derek Lavelle and Zator, and Deputy Warden Timoti Betti. Having given the plaintiff's complaint preliminary consideration pursuant to 28 U.S.C. §1915(e)(2), Judge Arbuckle construed the plaintiff's complaint as alleging a selective prosecution claim, Fifth Amendment claims and false imprisonment claims, and determined that the plaintiff failed to state a claim upon which relief could be granted. Although leave to amend would ordinarily be granted, Judge Arbuckle determined it would be futile to allow the plaintiff to file an amended complaint as he is subject to ongoing state and federal criminal proceedings and his claims would be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). He further determined, however, that dismissal should be without prejudice to filing a

new civil action after the resolution of his pending criminal cases if those cases terminate in the plaintiff's favor. Judge Arbuckle therefore filed the instant report in which he recommends that the plaintiff's complaint be dismissed without further leave to amend, but without prejudice to filing a new civil action after the resolution of the pending criminal cases, if the cases terminate in the plaintiff's favor. (Doc. 10). With the time for doing so having passed, the plaintiff has failed to file any objections to Judge Arbuckle's report.

Upon review of Judge Arbuckle's report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Arbuckle to his conclusions. As such, the court will adopt Judge Arbuckle's report in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The report and recommendation of Judge Arbuckle (Doc. 10)

is ADOPTED IN ITS ENTIRETY as the decision of the court.

(2) The plaintiff's complaint is DISMISSED, without leave to amend, pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted, but without prejudice to filing a new civil action after the resolution of his

pending criminal cases, if the cases terminate in the plaintiff's favor.

(3) The Clerk of Court is directed to CLOSE THIS CASE.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: January 4, 2022

21-170-01